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U.S. Citizenship
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FILE:

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Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:
Beneficiary:

PETITION:

Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Laura Deadrick

to Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as the senior pastor of Springfield Presbyterian Church in Erdenheim, Pennsylvania. The director determined that the petitioner had not established that the petitioner had the requisite two years of continuous work experience as a senior pastor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that his prospective employer had made a qualifying job offer.

We note that, in denying the petition, the director erroneously stated that the petitioner had only 15 days to file an appeal. The appeal period for a denial is 30 days, pursuant to 8 C.F.R. § 103.3(a)(2)(i). The 15-day appeal period applies to revocations of prior approvals, as specified at 8 C.F.R. § 205.2(d).

On appeal, the petitioner submits a brief from counsel.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue concerns the petitioner's past experience. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the

filing of the petition.” 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on December 27, 2005. Therefore, the petitioner must establish that he was continuously performing the duties of a senior pastor throughout the two years immediately prior to that date.

The petitioner entered the United States on July 3, 2003, and therefore spent the entire two-year qualifying period in the United States.

The petitioner’s initial submission contained little documentation regarding his work in the United States. Two programs from Springfield Presbyterian Church, dated November 2005, identified the petitioner as the church’s senior pastor.

On February 15, 2006, the director instructed the petitioner to submit evidence of “continuous . . . full-time experience” during the two-year qualifying period, along with tax returns and other evidence of how the petitioner supported himself during the relevant period. In response, the petitioner submitted a letter from an official of Houston (Texas) Graduate School of Theology (HGST), dated March 15, 2006, stating that the petitioner “is matriculated at Houston Graduate School of Theology since Fall 2003 in our Doctor of Ministry Program. He is currently a full time student and is in good academic standing.”

[REDACTED], Senior Elder of Springfield Presbyterian Church, stated that the petitioner has served as the church’s senior pastor since December 2003, receiving food, housing and transportation in lieu of salary. Church programs dated between 2003 and 2006 refer to the petitioner as the church’s senior pastor.

The director denied the petition on July 12, 2006, stating that the petitioner has not adequately documented his claimed work at Springfield Presbyterian Church. The director added that the record shows that the petitioner is a full-time student at HGST. Therefore, the director concluded, the record does not establish that the petitioner continuously performed qualifying religious work throughout the two-year qualifying period.

On appeal, counsel asserts that the petitioner has met his burden of proof. It is true that the record does not contain every possible document (such as tax returns) that might support the petitioner’s claims, but there is supporting evidence that is credible and internally consistent. Whatever consequences may result, in other contexts, from the petitioner’s failure to file income tax returns, this is not in itself a basis for denial.

The director justifiably voiced concerns about the petitioner’s status as a full-time student at HGST. If the petitioner had been studying full-time in Texas, then there is no way he could have also, at the same time, served the petitioning church in Pennsylvania. In an effort to address this apparent discrepancy, the AAO contacted the registrar of HGST. That official provided materials that indicate that the petitioner’s physical presence on campus is required for only one week per term, which would not represent a significant interruption of the petitioner’s pastoral work. The bulk of the work performed in pursuit of the Doctor of Ministry degree consists of two months of “advance reading” and “a three-month period in which the student completes a seminar project. . . . The student normally completes the seminar project in connection with his or her professional setting.” Therefore, there is no inherent contradiction between the petitioner’s work at a

Pennsylvania church and, at the same time, status as a full-time student at the graduate school in Texas. Indeed, if the seminar project is conducted in a “professional setting,” then the petitioner’s confirmed status as a student in the doctoral program is further circumstantial evidence of his active ministerial work. If the petitioner were a student instead of a minister, then a significant obstacle to eligibility would exist. Here, however, the petitioner’s studies complement, rather than replace, his full-time ministerial work.

Pursuant to the above, we withdraw the director’s finding that the petitioner lacks the required experience.

There remains the issue of the church’s job offer. 8 C.F.R. § 204.5(m)(4) requires the prospective employer to set forth terms to explain how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). The petitioner’s initial submission included no information about the proposed terms of employment. Therefore, the director requested “a statement from the beneficiary’s proposed employer, which establishes that the beneficiary will be employed full-time” and sets forth details such as the compensation offered.

The petitioner submitted two letters, each dated March 19, 2006, from [REDACTED]. One letter indicates that the “congregation is supporting [the petitioner] and his family by providing [a] Place to stay, Food and Transportation.” The other letter reads, in part:

The church congregation and I have invited the [petitioner] to preach and serve for Springfield Presbyterian Church. The [petitioner] will be a full time minister of the Church. [The petitioner] will be servicing Sunday mass and counseling for Youth Bible Group, approximately 32-40 hours per week. The Church congregation will provide [the petitioner] \$3,333 per month.

The director, in denying the petition, stated that the second quoted letter “contradicts the first,” because one letter indicates that the petitioner receives room and board in lieu of cash payment, whereas the other letter refers to a regular salary. The director added that the record contains no “[e]vidence of such payment.”

We see no contradiction between the two letters from [REDACTED]. One letter describes the *existing* arrangement, in which the church provides room and board instead of a salary; the other letter states that the church “*will* provide” a monthly salary at some future point. Because one letter addresses the past, and the other the future, there is no inherent contradiction between them. Therefore, we find that the prospective employer has specified satisfactory terms of a job offer, and we withdraw the director’s contrary finding.

There remains, however, a related issue concerning the petitioner’s compensation, which the director has heretofore not addressed. 8 C.F.R. § 204.5(m)(4) requires the prospective employer to set forth the terms of compensation; 8 C.F.R. § 204.5(g)(2) requires the prospective employer to establish that it is able to meet those terms. The latter regulation reads, in part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The

petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Because the record does not show that the church has ever paid a salary to the petitioner, there is at present no basis for a finding that the church is able to do so. This issue must be resolved before the petitioner can be said to have met his burden of proof.

As a church, the petitioner's prospective employer is not required to file federal tax returns or Form 990 returns, and a small organization of this kind is unlikely to produce annual reports for shareholders or the public. Therefore, the church is most likely to be able to produce audited financial statements showing that, ever since December 2005, the church has had the ability to pay the petitioner \$40,000 per year. (Any past agreement between the church and the petitioner to waive that salary does not relieve the church of the requirement to show that it *could* have paid such a salary.)

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.